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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	
	)	
Implementation of the Non-Accounting	)	
Safeguards of Sections 271 and 272 of	)	CC Docket No. 96-149
the Communications Act of 1934,	)	
as Amended	)	

BELLSOUTH COMMENTS ON PETITION FOR RECONSIDERATION

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BELLSOUTH COMMENTS ON PETITIONS FOR RECONSIDERATION

BellSouth Corporation, for itself and on behalf of its affiliated companies (collectively "BellSouth"), hereby submits these Comments on the petitions for reconsideration or other relief from various aspects of the Commission's *Second Report and Order*[1] filed in the above captioned proceeding. As discussed more fully below, BellSouth was joined by other petitioning parties in substantial numbers urging the Commission to reconsider its *Order* and to conclude that CPE and information services *are* within a carrier's total service relationship with its customers; that carriers *are* permitted to use CPNI without express approval to attempt to win a previous customer back from another carrier; and that carriers are *not* required to implement costly and ineffective "electronic audit and tracking" safeguards.

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[1] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 93-27 (rel. Feb. 26, 1998) ("*Second Report and Order*" or "*Order*").

I. Introduction and Summary

In the *Second Report and Order*, the Commission adopted rules reflecting its interpretation of Section 222[2] of the Communications Act of 1934, as amended.[3] That section addresses uses by carriers of "customer proprietary network information" ("CPNI") that carriers have about their customers' telecommunications services.

Under the interpretive approach of Section 222 adopted by the Commission, carriers are deemed to have customer approval to access, disclose, and use CPNI related to an individual customer for any purpose within the "total service relationship" between the carrier and the customer. The Commission based its "total service relationship" concept on its recognition that customers may be presumed to expect, and even to desire, carriers with whom they have an established business relationship to use CPNI in ways beneficial to the customer within the scope of that relationship.[4] Observing that Section 222 is for the most part, however, a "privacy" provision intended to afford the customer some control over any further use of such information (*i.e.*, uses outside the "total service relationship"), the Commission concluded that carriers must obtain affirmative approval from the customer before any such further use.[5]

Having adopted this fundamental framework as the interpretive guidance[6] for carriers to follow in implementing Section 222, the Commission went on to attempt to define in the *Second Report and Order* certain parameters of a "total service relationship." For example, the

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[2] 47 U.S.C. § 222.

[3] 47 U.S.C. §§ 151 *et seq.* ("the Communications Act" or "the Act").

[4] *Second Report and Order* at ¶ 54.

[5] *Second Report and Order* at ¶ 53.

[6] As the Commission has noted, the underlying Notice of Proposed Rulemaking in this proceeding was precipitated by "various informal requests for *guidance*" that focused principally on interpretation of the phrase "telecommunications service" as used in Section 222(c)(1)(A). See *Second Report and Order* at ¶ 6 and n.25.

Commission concluded that CPE and information services are not part of a carrier's total service relationship with a customer under Section 222(c)(1)(A)[7] and are not "necessary to or used in" the provision of services that are within the scope of that relationship, foreclosing use of CPNI without approval under Section 222(c)(1)(B).[8] Similarly, the Commission gratuitously opined that a total service relationship terminates instantaneously when a customer changes carriers and that the original carrier's use of CPNI to win that customer back is no longer a use within the total service relationship.[9] As BellSouth and a host of other petitioners have demonstrated, however, in reaching these conclusions, the Commission inexplicably and erroneously shifted from an analysis of customers' reasonable expectations to a rigid linguistics analysis.[10] The result is that the *Order* introduces serious disruptions to carriers' longstanding and traditional uses of CPNI that have been beneficial to their customers, and does so in ways that cannot be reconciled with customers' reasonable expectations.

Beyond these interpretive anomalies, numerous petitioners also agreed with BellSouth that the Commission's foray into the design of systems and procedures that carriers must deploy to implement the Commission's new requirements – particularly the electronic audit and tracking mechanisms as a means of "safeguarding" against speculative violations of those requirements[11] – was neither required by the Act nor supported by the record. The petitioners amply showed that the electronic safeguard requirements of the *Order* will impose significant and undue costs on all carriers while producing no attendant benefits that cannot otherwise be achieved through

[7] *Second Report and Order* at ¶ 45.

[8] *Second Report and Order* at ¶ 72-73.

[9] *Second Report and Order* at ¶ 85.

[10] BellSouth Petition at 5; GTE Petition at 6-10; SBC Petition at 2-8; PCIA Petition at 7-9; NTCA Petition at 4-8.

[11] *Second Report and Order* at ¶ 199.

less costly approaches.[12] Thus, parties provided substantial reasons for the Commission to eliminate these requirements.

Of course, in its *Order*, the Commission properly concluded that by its terms, Section 222 applies evenly to all carriers.[13] It is no surprise, then, that the issues raised by BellSouth and noted above were also raised by a variety petitioners from all segments of the telecommunications industry. This widespread and universal reaction to the Commission's *Order* thus reflects a common assessment of the impacts and burdens the requirements impose throughout the industry. However, while BellSouth strongly agrees with the wealth of petitioners on the need for relief from the aforementioned aspects of the *Order*, BellSouth opposes the tack taken by many of the petitioners.

Specifically, a number of petitioners attempt to escape the reaches of the Commission's conclusions by asserting some reason to distinguish themselves (and their industry segments) from other industry segments and to provide reasons the Commission's requirements, or Section 222 itself, should at least not apply to them.[14] A few petitioners also wrongly suggest that not only should the current requirements be modified as applied to them, but that even more egregious restrictions should be imposed only on BOCs[15] – a position expressly rejected by the Commission. Thus, while BellSouth agrees with many of the other petitioners that the Commission's requirements should be modified, BellSouth opposes attempts to carve up those requirements or the Act to apply in different ways to different industry segments. As the

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[12] Ameritech Petition at 8-11; Alltel Petition at 7-11; NTCA Petition at 11; 360° Communications Petition at 12.

[13] *Second Report and Order* at ¶ 49.

[14] NTCA Petition at 11; TDS Petition at 11-15; LCI Petition at 12.

[15] Independent Alliance Petition at 7; Frontier Petition at 3; MCI Petition at 29-32.

Commission has found, Section 222 was intended to afford the customers of all carriers the same degree of privacy protection. The Commission should avoid the significant erosion of that principle that would be engendered by individualized application of Section 222 to disparate industry segments.

Fortunately, the Commission can easily avoid such an undesirable consequence by granting for all carriers the relief on which there was substantial industry concurrence. Thus, BellSouth urges the Commission to reconsider its *Order* and to conclude that CPE and information services *are* within a carrier's total service relationship with its customers; that carriers *are* permitted to use CPNI without express approval to attempt to win a previous customer back from another carrier; and that carriers are *not* required to implement costly and ineffective "electronic audit and tracking" safeguards.

II. The Commission Should Reconsider Its Conclusion that Carriers Must Obtain Affirmative Approval Before Using CPNI to Sell CPE or Information Services

Almost universally, parties seeking reconsideration of the *Second Report and Order* asked the Commission for relief from its conclusion that CPE and/or information services are not to be considered part of a carrier's total service relationship with a customer and are not "necessary to or used in" the provision of services that are within that relationship. This call for reconsideration comes from wireline and wireless companies, interexchange and local carriers, large and small carriers, incumbents and new entrants, and trade associations and individual entities.[16]

[16] *See, e.g.,* SBC Petition at 5-8; GTE Petition at 6-10; Bell Atlantic Petition at 7-8; CompTel Petition at 15-19; USTA Petition at 2-6; NTCA Petition at 4-7; Paging Network Petition at 4-6; CommNet Cellular Petition at 2-3.

Collectively, carriers have used CPNI throughout their histories to offer their customers varying arrays of services and have included an ever changing selection of adjunct features and devices to make the underlying services work, or to work better. They have done so, however, not because they have a predisposition to misuse or misappropriate "sensitive" information about their customers' use of the underlying services, but because their customers expect and demand that their carriers be able to provide this level of customer support. Indeed, for many services, specialized CPE is required for the associated service to have any utility whatsoever. As the petitioning parties point out, there simply is no evidence in the record that customers expect anything less from their carriers.

Unfortunately, notwithstanding the Commission's own conclusion that the scope of a carrier's total service relationship with its customers is defined by "what customers reasonably understand their telecommunications service to include,"[17] the Commission has at best only paid lip service to customers' expectations in its analysis of CPE and information services.[18] Instead, the Commission lapsed in the *Second Report and Order* into a rigid definitional analysis based on regulatory classifications that are meaningless to customers, and concluded that a strict statutory construction would not permit the inclusion of CPE and information services within the customer's understanding of what its telecommunication service includes. Parties have convincingly shown, however, that customer expectations must be afforded more weight in the Commission's analysis to remain consistent with the Commission's own pronouncement of

[17] *Second Report and Order* at ¶ 24.

[18] *Cf.*, National Telephone Cooperative Association Petition at 5 ("While the Commission does discuss customer expectations as they relate to CPE and wireline services, it does so superficially."). *See also,* CTIA Petition at 19-20 ("The *Order* does not reference any record evidence on customer expectations as to what mobile services are functionally related.")

customer expectations as the predominant factor in defining the customer's total service relationship.[19]

Alternatively, various petitioners have also shown that CPE and information services are "necessary to or used in" the provision of the associated telecommunications services. A number of parties, for example, correctly observe that wireline CPE is no different from inside wire,[20] which the Commission has already determined is "necessary to or used in" the provision of telecommunications services.[21] Similarly, several petitioners echoed BellSouth's observation that certain services particularly voice storage, delivery, and messaging functions, to which customers are no different from a range of telecommunication service management options, are "necessary" to telecommunications services,[22] as that term has been applied in other contexts.[23]

The petitions thus present a solid basis upon which the Commission should reconsider its decision that carriers must obtain affirmative approval before using CPNI to market CPE and information services. If the Commission nevertheless still feels that it is constrained by the statutory language not to interpret Section 222 in a way that will accommodate the requested interpretation, however, the Commission should utilize its forbearance authority to achieve that result, as several parties have requested. The petitions present a compelling case that the

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[19] Bell Atlantic Petition at 11; Ameritech Petition at 2-6; PrimeCo Petition at 3-4.

[20] *See, e.g.,* SBC Petition at 3; GTE Petition at 7-8; LCI Petition at 10-11; NTCA Petition at 5-6; USTA Petition at 3-6.

[21] *Second Report and Order* at ¶ 79.

[22] *See, e.g.,* CompTel Petition at 17; Ameritech Petition at 2-3; NTCA Petition at 6-7; Bell Atlantic Petition at 7-9.

[23] *See, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996: Interconnection Between Local Exchange Carriers and Commercial Radio Service Providers*, 11 FCC Rcd 15499, 15794 (1996) (interpreting the word "necessary" in Section 251(c)(6) of the Act to mean "used" or "useful").

conditions of Section 10 are met with the instant circumstances and that forbearance is required.[24]

III. The Commission's Restriction on Use of CPNI For Winback Purposes Was Roundly Criticized and Should Be Eliminated

Petitioning parties from all segments of the industry also came together to criticize the Commission's decision to prohibit carriers' use of CPNI to regain a past customer's business, absent affirmative approval from the customer. Parties cited a number of different deficiencies with the requirement, such as that the requirement is antithetical to the general pro-competitive objectives of the Act;[25] that the requirement lacks any specific statutory basis;[26] that the use prohibited by the Commission is permitted under Section 222(d)(1);[27] that the requirement effects a Constitutional taking;[28] that the requirement was adopted with inadequate notice, record support, and explanation;[29] that customers expect carriers to use CPNI in the manner prohibited by the Commission;[30] that no customer privacy expectation is infringed upon by a use consistent with such expectations;[31] that such use enhances competition at a crucial moment in the

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[24] The Commission should also note that this same issue has previously been presented to the Commission in two petitions for deferral or interim forbearance pending this reconsideration proceeding. *See*, CTIA Request for Deferral and Clarification, CC Docket No. 96-115 (filed April 24, 1998); GTE Petition for Temporary Forbearance, or in the Alternative, Motion for Stay, CC Docket No. 96-115 (filed April 29, 1998). Those requests received substantial and widespread support and generated no opposition. BellSouth thus urges the Commission promptly to grant those outstanding requests.

[25] *See, e.g.*, GTE Petition at 35; USTA Petition at 7-8.

[26] *See, e.g.*, Frontier Petition at 8; AT&T Petition at 2; 360° Communication Petition at 11.

[27] *See, e.g.*, GTE Petition at 34; Omnipoint Petition at 18; AT&T Petition at 3.

[28] *See, e.g.*, GTE Petition at 36-37.

[29] *See, e.g.*, Bell Atlantic Petition at 16; USTA Petition at 6; Omnipoint Petition at 17.

[30] *See, e.g.*, Frontier Petition at 7-8; SBC Petition at 9: 360° Communications Petition at 11.

[31] *See, e.g.*, AT&T Petition at 3; 360° Communications Petition at 11.

customer's decisions making process;[32] that customers benefit from such use;[33] and that the prohibition itself inhibits competition and provides no benefits.[34] For all these reasons, the Commission should rescind this unwarranted restriction.[35]

Even if the Commission retains its rule -- which it should not, the Commission should confirm, as Comcast has requested, that the rule does not proscribe carriers' use of CPNI in the administration of "rewards" or "loyalty" programs that are designed to create incentives for customers not to leave for another carrier.[36] Such programs based on ongoing usage or purchasing activities by customers have proven to be attractive customer retention tools in a number of industries. Moreover, because such programs are used to provide marketing incentives for the original purchase of services from which the awards (*e.g.*, redeemable points) accrue, BellSouth concurs with Omnipoint[37] that a customer's subsequent redemption of accrued awards is not a "marketing" of the award product, even if the award product (*e.g.*, hotel accommodations) is not within the customer's total service relationship with the carrier.

Finally, the Commission should not be led astray by MCI's meandering attempt to confuse the issues of ILEC use of customer CPNI for winback purposes under Section 222(c) and the obligations all carriers have under Section 222(a) or 222(b) with respect to information they receive from one another.[38] Even AT&T finds it clear that there should be "no general

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[32] *See, e.g.*, AT&T Petition at 4; GTE Petition at 35.

[33] *See, e.g.*, Frontier Petition at 8.

[34] *See, e.g.*, 360° Communications Petition at 11; CTIA Petition at 31-33.

[35] As above, the Commission similarly should act promptly on the outstanding petitions for deferral or for other interim relief from this requirement and not await the completion of reconsideration phase of this proceeding.

[36] *See* Comcast Petition at 16-17.

[37] *See* Omnipoint Petition at 19.

[38] MCI Petition at 49-52.

prohibition on use of CPNI for winback by *any* carrier"[39] under Section 222(c). And, MCI itself has previously acknowledged that carriers should be able to negotiate their respective rights to information governed by Section 222(a) or 222(b).[40] Accordingly, the Commission should reject MCI's attempt to have more onerous winback restrictions placed on ILECs.

IV. The Commission Should Eliminate the Costly and Potentially Ineffective Electronic Audit and Tracking Requirement; At a Minimum, the Commission Should Stay This Requirement Pending Reconsideration

As with the two previous issues, there was widespread agreement throughout the industry that the electronic access documentation and audit trail requirement of the *Second Report and Order* should be eliminated. Large carriers explained that they have potentially hundreds of systems that could be affected by the requirement.[41] and that the costs of implementing the requirement for all of these systems (including both up front and annual recurring data storage costs) could reach hundreds of millions of dollars.[42] Small carriers explained that some of them do not even *have* electronic systems or that, even if they did, the cost per customer for the implementation could be over one hundred dollars per customer line.[43] Moreover, all petitioners

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[39] AT&T Petition at n.3 (emphasis added).

[40] *See, e.g.,* MCI Comments on Further Notice of Proposed Rulemaking, CC Docket 96-115 (filed March 30, 1998) at n.6 ("Nothing in Section 222 appears to limit carriers' abilities to voluntarily provide greater, or accept less, protection for [carrier proprietary] information pursuant to contract than that afforded by Section 222(a) and (b)."); id. at 16 ("Businesses are used to having to safeguard others' confidential information, including competitors' information, and almost all of the relationships that cause carrier proprietary information to be provided to other carriers, such as resale, are governed by contracts that contain strict confidentiality provisions.").

[41] *See, e.g.,* Ameritech Petition at 8; AT&T Petition at 11; *see also* MCI Petition at 37 (citing "hundreds" of systems and potentially "thousands" of databases).

[42] *See, e.g.,* AT&T Petition at 12; MCI Petition at 37-38 (projecting data storage costs of $1 *billion* per year); *cf.* BellSouth Petition at 21 (noting "preliminary estimates . . . that the five-year implementation costs will *easily exceed* $75 million for BellSouth alone.")

[43] *See, e.g.,* NTCA Petition at 8-10.

agreed that the requirement was not certain to produce any measurable benefits, and certainly would provide no benefits that could not be achieved through less costly and less onerous requirements.[44] Thus, petitioners convincingly demonstrated that the electronic audit and tracking requirement fails any cost/benefits analysis and should be eliminated.

Moreover, as several parties noted, the Commission's errant conclusion on this issue was based on faulty assumptions of likely burdens, rather than on a definitive record fostered by prior public notice.[45] As LCI observed, the original Notice of Proposed Rulemaking in this proceeding contained a proposal *not* to impose a mechanized safeguard requirement,[46] and even that proposal was in the context of a *access* restriction mechanism, not a mechanism for tracking *use* of CPNI in carriers' systems. Thus, at a minimum, before the Commission imposes such a requirement, it must conduct an appropriate rulemaking proceeding, including proper prior notice.[47] Until it does so, the Commission must rescind the current requirement.

BellSouth also urges the Commission to act expeditiously in rescinding this requirement. Although the Commission has indicated that it will not initiate enforcement activity for this requirement until eight months after the effective date of the *Second Report and Order*, relief from this requirement is needed now. Due to the magnitude and complexity of the implementation requirement as it now stands, carriers are already having to pour money and other IT resources into this project. Such investments will be wasted, however, if the Commission eliminates the requirement on reconsideration as the petitions convincingly show

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[44] *See, e.g.*, Frontier Petition at 5; LCI Petition at 6; Bell Atlantic Petition at 22.

[45] *See, e.g.*, USTA Petition at 15; BellSouth Petition at 20-21; Ameritech Petition at 8.

[46] LCI Petition at 2.

[47] BellSouth believes, however, that the record generated by the instant reconsideration petitions should be sufficient to convince the Commission *not* to pursue such a course.

that it should. The Commission thus must act quickly to avoid (or at least minimize) such wasteful results.

Alternatively, BellSouth urges the Commission to act on its own motion to stay the current requirement. Under comparable circumstances in the past, the Commission has issued a stay on its own motion to avoid economic harm to carriers pending the Commission's reconsideration of underlying issues, finding that such a stay would serve the public interest.[48] The circumstances in the present case are just as compelling. No public interest would be served by causing carriers to incur substantial costs to implement a requirement that itself provides no public benefit and that affected parties have universally shown should be rescinded. Accordingly, the Commission should issue a stay promptly to avoid impending economic waste.

Finally, even if the Commission remains unpersuaded that its present requirement needs to be rescinded, the Commission should grant relief from the requirement for systems that carriers have slated for retirement or replacement within a reasonable period after the requirement's enforcement date. BellSouth, for one, has identified several systems that are scheduled for retirement or replacement in calendar year 1999. It would make no sense for BellSouth to expend significant resources to make these systems compliant with the current requirement, only to eliminate those systems shortly after doing so. BellSouth thus suggests that, even if the Commission retains its requirement, it should grant relief for systems that are scheduled for retirement or replacement within a year after the Commission's enforcement date.

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[48] *See, e.g., Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, 10 FCC Rcd 13819 (1995); *see also, Rules and Policies Regarding Calling Number Identification Service -- Caller ID*, 11 FCC Rcd 17454 (1996) (Bureau order).

V. The Commission Should Not Carve Up Section 222 and Apply It Differently to Different Carriers

The Commission properly concluded in the *Second Report and Order* that Section 222 applies evenly to all carriers.[49] As the Commission recognized, Section 222 is predominantly a customer privacy protection statute, and individuals' expectations of privacy do not vary on the basis of a carrier's identity. Hence, Section 222 imposes the same obligations on "every telecommunications carrier" without distinction among categories of carriers, except in limited, Congressionally-specified instances.[50] That the statute applies by its terms to all carriers explains the extensive and consistent opposition to the requirements addressed in the previous sections.

Notwithstanding the clear indication from Congress that Section 222 applies across all carriers, a number of petitioners attempt to hedge their bets by arguing that even if the Commission retains its interpretation and implementing regulations, the respective petitioners should be excused from those requirements for one reason or another. Rural telephone companies assert that they are rural and poor; small telephone companies make similar claims. Some wireless carriers join the rural and small companies in asserting the rules are more burdensome for them because they have never been subject to CPNI rules before (ignoring that the present rules are also materially different from the previous CPNI rules to which BOCs had been subject). Others claim that market conditions warrant different rules for different carriers. All of these claims were previously considered and rejected by the Commission.[51]

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[49] *Second Report and Order* at ¶ 49-50.

[50] *See, e.g.*, 47 U.S.C. §§ 222(c)(3), 222(e).

[51] *Second Report and Order* at ¶ 49-50.

Moreover, the net result of all these claims if the Commission were to buy into them (and clearly the intended consequence of some petitioners) would be that only large incumbent LECs would remain subject to the rules this Commission adopted to implement a statute that Congress specified is to apply to "every telecommunications carrier." Such a fractured implementation would clearly be at odds with Congress's intent. Accordingly the Commission should again reject these pleas for favored treatment for different industry segments.

The Commission can avoid imposing any undue hardship on any segment of the industry, however, while still meeting the statutory prescription that every carrier be subject to the same requirements. That is, by modifying for all carriers the regulatory constraints discussed in sections II and III, above, the Commission will relieve all carriers of the requirements that are the most disruptive to carriers' relationships with their customers. Similarly, by eliminating the electronic audit and tracking safeguard discussed in section IV and giving all carriers the benefit of the doubt that they will comply with the law on their own volition, the Commission will relieve all carriers of the most egregious and economically burdensome implementation requirements (with no loss of customer privacy protection). Accordingly, it is unnecessary for the Commission to attempt to craft different interpretations and implementation requirements for different segments of the industry in contravention of the clear intent of Congress.

As a corollary, it would also be wrong for the Commission to impose even greater CPNI burdens solely on the BOCs, as MCI and a small minority of petitioners advocate. These petitioners claim that the Commission inappropriately decided as a policy matter that the specific CPNI provisions of Section 222 should trump the generalized "information" obligations of

Section 272(c) have been thoroughly considered and rejected.[52] The Commission properly concluded that

> interpreting section 272 to impose no additional obligations on the BOCs when they share CPNI with their statutory affiliates according to the requirements of section 222 . . . most reasonably reconciles the goals of these two provisions. This is so because imposing section 272's nondiscrimination obligations when the BOCs share CPNI with their section 272 affiliates would not further the principles of customer convenience and control embodied in section 222, and could potentially undermine customers' privacy interests as well, while the anticompetitive advantages section 272 seeks to remedy are sufficiently addressed through the mechanisms in section 222 that seek to balance the competitive concerns regarding LECs' use and protection of CPNI.[53]

Thus, the Commission specifically concluded that the policy goals of *both* section 222 and 272 would be accommodated by the interpretation adopted. while the interpretation advocated by petitioners would undermine the customer control, convenience, and privacy principles of Section 222.

Petitioners' attempts to have the Commission revisit this policy conclusion by citing Commissioner Ness's dissenting statement are not persuasive.[54] Moreover, the concerns expressed therein and reiterated by these petitioners overlook one of the salient aspects of the Commission's total service relationship scheme. That is, these parties assert that a BOC's sharing of CPNI with its Section 272 affiliate under the total service relationship will give the affiliate an unfair competitive advantage. This concern ignores that under the scheme adopted

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[52] MCI's argument that this issue was not adequately noticed is just flat wrong. The Bureau's request for supplemental comments, Public Notice, *Common Carrier Bureau Seeks Further Comment on Specific Questions in CPNI Rulemaking*, CC Docket No. 96-115, DA 97-385 (Feb. 20, 1997), specifically focused on the manner in which Section 272 should apply to CPNI, as MCI concedes. MCI Petition at 6. A conclusion that Section 272 should not apply at all to CPNI is an obvious, natural and logical outgrowth of such an inquiry. Indeed, that argument was made in parties' comments and MCI responded to them. Thus, this issue was adequately noticed and fully debated.

[53] *Second Report and Order* at ¶ 160.

[54] *Second Report and Order*, Statement of Commissioner Ness Dissenting in Part.

by the Commission, the BOC will be unable to share a customer's CPNI with its Section 272 affiliate until the BOC has secured the affirmative approval of the customer (which compares from a competitive standpoint to the obligation similarly to share CPNI with a third party upon written customer direction) or until the Section 272 affiliate has already acquired the customer, *without the benefit of the BOC's CPNI.* Thus, in competing for a new customer's long distance business, the Section 272 affiliate has no CPNI advantage for it has no CPNI whatsoever (absent affirmative customer approval), and is thus at a material *disadvantage* to incumbent IXCs who have a wealth of usage and pattern data for every one of their customers. Claims that the *Second Report and Order* unfairly disadvantages IXCs are specious and provide no basis for the Commission to revisit its decision not to superimpose Section 272 on BOCs' Section 222 obligations.

CONCLUSION

BellSouth respectfully requests the Commission to reconsider the *Second Report and Order* to the extent and for the reasons described herein and in BellSouth's Petition..

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 8th day of May, 1998, served all parties to this action with a copy of the foregoing PETITION FOR RECONSIDERATION by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

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